

AMENDMENT TO RULES COMMITTEE PRINT

118-10

OFFERED BY MR. BANKS OF INDIANA

Add at the end of subtitle C of title XVIII the following:

1 **SEC. 18___ . INADMISSIBILITY OF MEMBERS OF SIGNIFI-**
2 **CANT TRANSNATIONAL CRIMINAL ORGANIZA-**
3 **TIONS.**

4 (a) IN GENERAL.—Section 212(a)(2)(F) of the Im-
5 migration and Nationality Act (8 U.S.C. 1182(a)(2)(F))
6 is amended to read as follows:

7 “(F) MEMBERSHIP IN A SIGNIFICANT
8 TRANSNATIONAL CRIMINAL ORGANIZATION.—

9 “(i) IN GENERAL.—Any alien who—
10 “(I) is a member of a significant
11 transnational criminal organization; or
12 “(II) is the spouse or child of an
13 alien described in subclause (I),
14 is inadmissible.

15 “(ii) EXCEPTION.—Clause (i)(II) shall
16 not apply to a spouse or child—

17 “(I) who did not know, or should
18 not reasonably have known, that his

1 or her spouse or parent was a member
2 of a significant transnational criminal
3 organization; or

4 “(II) whom the consular officer
5 or the Attorney General has reason-
6 able grounds to believe has renounced
7 the significant transnational criminal
8 organization to which his or her
9 spouse or parent belongs.”.

10 (b) DESIGNATION OF SIGNIFICANT TRANSNATIONAL
11 CRIMINAL ORGANIZATIONS.—

12 (1) IN GENERAL.—Chapter 2 of title II of the
13 Immigration and Nationality Act (8 U.S.C. 1181 et
14 seq.) is amended by adding at the end the following:

15 **“SEC. 219A. DESIGNATION OF SIGNIFICANT**
16 **TRANSNATIONAL CRIMINAL ORGANIZATIONS.**

17 “(a) DESIGNATION.—

18 “(1) IN GENERAL.—The Attorney General is
19 authorized to designate an organization as a signifi-
20 cant transnational criminal organization in accord-
21 ance with this subsection if the Attorney General,
22 after consultation with the Secretary of State, the
23 Secretary of the Treasury, and the Secretary of
24 Homeland Security, determines that—

1 “(A) the organization is a foreign organi-
2 zation;

3 “(B) the organization—

4 “(i) engages in criminal activity that
5 involves or affects commerce in the United
6 States; or

7 “(ii) retains the ability and intent to
8 engage in such criminal activity; and

9 “(C) the criminal activity of the organiza-
10 tion threatens the security of United States na-
11 tionals or the national security of the United
12 States.

13 “(2) PROCEDURE.—

14 “(A) NOTICE.—

15 “(i) TO CONGRESSIONAL LEADERS.—

16 Not later than 7 days before making a des-
17 ignation under this subsection, the Attor-
18 ney General shall, by classified communica-
19 tion, notify the Speaker and minority lead-
20 er of the House of Representatives, the
21 President pro tempore, majority leader,
22 and minority leader of the Senate, and the
23 members of the relevant committees of the
24 House of Representatives and the Senate,
25 in writing, of—

1 “(I) the intent to designate an
2 organization under this subsection;
3 and

4 “(II) the findings made under
5 paragraph (1) with respect to that or-
6 ganization, including the factual basis
7 for such determination.

8 “(ii) PUBLICATION IN FEDERAL REG-
9 ISTER.—The Attorney General shall pub-
10 lish the designation in the Federal Register
11 not later than 7 days after providing the
12 notification under clause (i).

13 “(B) EFFECT OF DESIGNATION.—A des-
14 ignation under this subsection—

15 “(i) shall take effect upon publication
16 under subparagraph (A)(ii), for purposes
17 of section 212(a)(2)(F) of this Act and
18 section 2339B of title 18, United States
19 Code; and

20 “(ii) shall cease to have effect upon
21 an Act of Congress disapproving such des-
22 ignation.

23 “(C) FREEZING OF ASSETS.—Upon notifi-
24 cation under paragraph (2)(A)(i), the Secretary
25 of the Treasury may require United States fi-

1 nancial institutions possessing or controlling
2 any assets of any foreign organization included
3 in the notification to block all financial trans-
4 actions involving those assets until further di-
5 rective from the Secretary of the Treasury, an
6 Act of Congress, or a court order.

7 “(3) RECORD.—

8 “(A) IN GENERAL.—In making a designa-
9 tion under this subsection, the Attorney Gen-
10 eral shall create an administrative record.

11 “(B) CLASSIFIED INFORMATION.—The At-
12 torney General may consider classified informa-
13 tion in making a designation under this sub-
14 section. Classified information shall not be sub-
15 ject to disclosure for such time as it remains
16 classified, except that such information may be
17 disclosed to a court ex parte and in camera for
18 purposes of judicial review under subsection (c).

19 “(4) PERIOD OF DESIGNATION.—

20 “(A) IN GENERAL.—A designation under
21 this subsection shall be effective for all purposes
22 until revoked under paragraph (5) or (6) or set
23 aside pursuant to subsection (c).

24 “(B) REVIEW OF DESIGNATION UPON PE-
25 TITION.—

1 “(i) IN GENERAL.—The Attorney
2 General shall review the designation of a
3 significant transnational criminal organiza-
4 tion under the procedures set forth in
5 clauses (iii) and (iv) if the designated orga-
6 nization files a petition for revocation with-
7 in the petition period described in clause
8 (ii).

9 “(ii) PETITION PERIOD.—For pur-
10 poses of clause (i)—

11 “(I) if the designated organiza-
12 tion has not previously filed a petition
13 for revocation under this subpara-
14 graph, the petition period begins 2
15 years after the date on which the des-
16 ignation was made; or

17 “(II) if the designated organiza-
18 tion has previously filed a petition for
19 revocation under this subparagraph,
20 the petition period begins 2 years
21 after the date of the determination
22 made under clause (iv) on that peti-
23 tion.

24 “(iii) PROCEDURES.—Any significant
25 transnational criminal organization that

1 submits a petition for revocation under
2 this subparagraph shall provide evidence in
3 that petition that the relevant cir-
4 cumstances described in paragraph (1) are
5 sufficiently different from the cir-
6 cumstances that were the basis for the des-
7 ignation such that a revocation with re-
8 spect to the organization is warranted.

9 “(iv) DETERMINATION.—

10 “(I) IN GENERAL.—Not later
11 than 180 days after receiving a peti-
12 tion for revocation submitted under
13 this subparagraph, the Attorney Gen-
14 eral shall make a determination re-
15 garding such petition.

16 “(II) CLASSIFIED INFORMA-
17 TION.—The Attorney General may
18 consider classified information in
19 making a determination in response to
20 a petition for revocation. Classified in-
21 formation shall not be subject to dis-
22 closure for such time as it remains
23 classified, except that such informa-
24 tion may be disclosed to a court ex

1 parte and in camera for purposes of
2 judicial review under subsection (c).

3 “(III) PUBLICATION OF DETER-
4 MINATION.—A determination made by
5 the Attorney General under this
6 clause shall be published in the Fed-
7 eral Register.

8 “(IV) PROCEDURES.—Any rev-
9 ocation by the Attorney General shall
10 be made in accordance with para-
11 graph (6).

12 “(C) OTHER REVIEW OF DESIGNATION.—

13 “(i) IN GENERAL.—If no review is
14 conducted pursuant to subparagraph (B)
15 during the 5-year period beginning on the
16 date on which a designation under this
17 subsection takes effect, the Attorney Gen-
18 eral shall review the designation of the sig-
19 nificant transnational criminal organiza-
20 tion in order to determine whether such
21 designation should be revoked pursuant to
22 paragraph (6).

23 “(ii) PROCEDURES.—If a review does
24 not take place pursuant to subparagraph
25 (B) in response to a petition for revocation

1 that is filed in accordance with that sub-
2 paragraph, then the review shall be con-
3 ducted pursuant to procedures established
4 by the Attorney General. The results of
5 such review and the applicable procedures
6 shall not be reviewable in any court.

7 “(iii) PUBLICATION OF RESULTS OF
8 REVIEW.—The Attorney General shall pub-
9 lish any determination made pursuant to
10 this subparagraph in the Federal Register.

11 “(5) REVOCATION BY ACT OF CONGRESS.—

12 “(A) IN GENERAL.—Except as provided by
13 subparagraph (B), Congress, by an Act of Con-
14 gress, may block or revoke a designation made
15 under paragraph (1) through the congressional
16 disapproval procedure set forth in section 802
17 of title 5, United States Code.

18 “(B) REFERENCES TO RULE.—In applying
19 the procedure, references to the term ‘rule’ in
20 such section 802 shall be deemed to refer to a
21 designation made under paragraph (1).

22 “(C) EFFECTIVE DATE.—A joint resolution
23 to block or revoke a designation made under
24 paragraph (1) shall not be subject to the proce-
25 dure set forth in such section 802 unless it is

1 introduced in either House of Congress during
2 the 60-day period beginning on the date on
3 which the Attorney General notifies Congress
4 pursuant to paragraph (2)(A)(i).

5 “(6) REVOCATION BASED ON CHANGE IN CIR-
6 CUMSTANCES.—

7 “(A) IN GENERAL.—The Attorney Gen-
8 eral—

9 “(i) may revoke a designation made
10 under paragraph (1) at any time; and

11 “(ii) shall revoke a designation upon
12 completion of a review conducted pursuant
13 to subparagraphs (B) and (C) of para-
14 graph (4) if the Attorney General deter-
15 mines that—

16 “(I) the circumstances that were
17 the basis for the designation have
18 changed in such a manner as to war-
19 rant revocation; or

20 “(II) the national security of the
21 United States warrants a revocation.

22 “(B) PROCEDURE.—The procedural re-
23 quirements under paragraphs (2) and (3) shall
24 apply to a revocation under this paragraph. Any
25 revocation shall take effect on the date specified

1 in the revocation or upon publication in the
2 Federal Register if no effective date is specified.

3 “(7) EFFECT OF REVOCATION.—The revocation
4 of a designation under paragraph (5) or (6) shall
5 not affect any action or proceeding based on conduct
6 committed before the effective date of such revoca-
7 tion.

8 “(8) USE OF DESIGNATION IN TRIAL OR HEAR-
9 ING.—If a designation under this subsection has be-
10 come effective pursuant to paragraph (2)(B), a de-
11 fendant in a criminal action or an alien in a removal
12 proceeding shall not be permitted to raise any ques-
13 tion concerning the validity of the issuance of such
14 designation as a defense or an objection at any trial
15 or hearing.

16 “(b) AMENDMENTS TO A DESIGNATION.—

17 “(1) IN GENERAL.—The Attorney General may
18 amend a designation under this subsection if the At-
19 torney General discovers that the organization has
20 changed its name, adopted a new alias, dissolved and
21 then reconstituted itself under a different name or
22 names, or merged with another organization.

23 “(2) PROCEDURE.—Amendments made to a
24 designation in accordance with paragraph (1) shall
25 be effective upon publication in the Federal Register.

1 Subparagraphs (B) and (C) of subsection (a)(2)
2 shall apply to an amended designation upon such
3 publication. Paragraphs (2)(A)(i), (4), (5), (6), (7),
4 and (8) of subsection (a) shall apply to an amended
5 designation.

6 “(3) ADMINISTRATIVE RECORD.—The adminis-
7 trative record shall be corrected to include the
8 amendments and any additional relevant information
9 that supports such amendments.

10 “(4) CLASSIFIED INFORMATION.—The Attorney
11 General may consider classified information in
12 amending a designation in accordance with this sub-
13 section. Classified information shall not be subject to
14 disclosure for such time as it remains classified, ex-
15 cept that such information may be disclosed to a
16 court ex parte and in camera for purposes of judicial
17 review under subsection (c).

18 “(c) JUDICIAL REVIEW OF DESIGNATION.—

19 “(1) IN GENERAL.—Not later than 30 days
20 after publication in the Federal Register of a des-
21 ignation, an amended designation, or a determina-
22 tion in response to a petition for revocation, the des-
23 ignated organization may seek judicial review in the
24 United States Court of Appeals for the District of
25 Columbia Circuit.

1 “(2) BASIS OF REVIEW.—Review under this
2 subsection shall be based solely upon the administra-
3 tive record, except that the Government may submit,
4 for ex parte and in camera review, classified infor-
5 mation used in making the designation, amended
6 designation, or determination in response to a peti-
7 tion for revocation.

8 “(3) SCOPE OF REVIEW.—The Court shall hold
9 unlawful and set aside a designation, amended des-
10 igation, or determination in response to a petition
11 for revocation the court finds to be—

12 “(A) arbitrary, capricious, an abuse of dis-
13 cretion, or otherwise not in accordance with
14 law;

15 “(B) contrary to constitutional right,
16 power, privilege, or immunity;

17 “(C) in excess of statutory jurisdiction, au-
18 thority, or limitation, or short of statutory
19 right;

20 “(D) lacking substantial support in the ad-
21 ministrative record taken as a whole or in clas-
22 sified information submitted to the court under
23 paragraph (2), or

24 “(E) not in accord with the procedures re-
25 quired by law.

1 “(4) JUDICIAL REVIEW INVOKED.—The pend-
2 ency of an action for judicial review of a designation,
3 amended designation, or determination in response
4 to a petition for revocation shall not affect the appli-
5 cation of this section, unless the court issues a final
6 order setting aside the designation, amended des-
7 ignation, or determination in response to a petition
8 for revocation.”.

9 (2) CLERICAL AMENDMENT.—The table of con-
10 tents of the Immigration and Nationality Act (8
11 U.S.C. 1101 note) is amended by inserting after the
12 item relating to section 219 the following:

“Sec. 219A. Designation of significant transnational criminal organizations.”.

13 (c) PROVIDING MATERIAL SUPPORT OR RESOURCES
14 TO SIGNIFICANT TRANSNATIONAL CRIMINAL ORGANIZA-
15 TIONS.—Section 2339B of title 18, United States Code,
16 is amended—

17 (1) by inserting “or a significant transnational
18 criminal organization” after “foreign terrorist orga-
19 nization” each place such term appears;

20 (2) in subsection (a)(1), by amending the sec-
21 ond sentence to read as follows: “A person may not
22 be prosecuted for violating this paragraph unless the
23 person has knowledge that the organization referred
24 to in the previous sentence—

25 “(A) is a designated terrorist organization;

1 “(B) is a significant transnational criminal
2 organization;

3 “(C) has engaged or engages in terrorist
4 activity (as defined in section 212(a)(3)(B) of
5 the Immigration and Nationality Act); or

6 “(D) has engaged or engages in terrorism
7 (as defined in section 140(d)(2) of the Foreign
8 Relations Authorization Act, Fiscal Years 1988
9 and 1989).”; and
10 (3) in subsection (g)—

11 (A) in paragraph (5), by striking “and” at
12 the end;

13 (B) by redesignating paragraph (6) as
14 paragraph (7); and

15 (C) by inserting after paragraph (5) the
16 following:

17 “(6) the term ‘significant transnational criminal
18 organization’ means an organization so designated
19 under section 219A of the Immigration and Nation-
20 ality Act; and”.

